

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:3

PLR-127415-06

Date:

November 30, 2006

Company:

Member:

State:

a:

b:

Dear :

This letter responds to a letter from your authorized representative dated May 8, 2006, as well as subsequent correspondence, requesting rulings for Company under § 301.9100-1(c) of the Procedure and Administration Regulations (regarding a late entity classification election) and under § 1362(b)(5) of the Internal Revenue Code (regarding a late S corporation election).

FACTS

Company was formed under the laws of State on a, and Member intended Company to be an S corporation from inception. Company represents that Form 8832 (Entity Classification Election) and Form 2553 (Election by a Small Business Corporation) were timely filed with the Internal Revenue Service on b; however, the Service has no record of such a filing. Company has filed federal tax returns (Form 1120S – U.S. Income Tax Return for an S Corporation) for all relevant tax years, and Member has filed his own federal tax returns (Form 1040 – U.S. Individual Income Tax

Return) for the same years, consistent with Company's intended status as an S corporation.

LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) may elect its classification for federal tax purposes under § 301.7701-3. An eligible entity with a single owner can elect to be classified as an association (and thus a corporation under § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1)(ii) provides in general that, unless it elects otherwise, a domestic eligible entity with a single owner is disregarded as an entity separate from its owner.

Section 301.7701-3(c)(1)(i) provides in general that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b) by filing Form 8832 with the applicable service center.

Section 301.7701-3(c)(1)(iii) provides that an election made under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

Section 1362(b)(1) provides, in general, that an election by a small business corporation under § 1362(a) to be an S corporation may be made for any tax year (A) at any time during the preceding tax year, or (B) at any time during the tax year and on or before the 15th day of the 3d month of the tax year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any tax year, and (B) that election is made after the 15th day of the 3d month of the tax year and on or before the 15th day of the 3d month of the following tax year, then that election shall be treated as made for the following tax year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for that tax year or no such election is made for any tax year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such election as timely made for that tax year (and § 1362(b)(3) shall not apply).

CONCLUSION

Based on the facts and representations submitted, we conclude that Company has satisfied the requirements of §§ 301.9100-1 and 301.9100-3 and that there was reasonable cause for Company's failure to make a timely S corporation election under § 1362(a). Consequently--

- Company is granted an extension of 60 days from the date of this letter for electing under § 301.7701-3 to be treated as an association taxable as a corporation effective a. Company must file Form 8832 within the extension period with the appropriate service center, with a copy of this letter attached.
- Company's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning a. This ruling is contingent on Company filing Form 2553, to be effective on a, with the appropriate service center no later than 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553.

Except for the specific rulings above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion on whether Company otherwise qualifies to be an S corporation. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer on whose behalf it was requested. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

WILLIAM P. O'SHEA
Associate Chief Counsel
(Passthroughs and Special Industries)